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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

N. W. et al.,

Petitioners,

v.

THE SUPERIOR COURT OF SAN
DIEGO COUNTY,

Respondent;

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Real Party in Interest.

D042398

(San Diego County
Super. Ct. No. SJ10919)

PROCEEDINGS in mandate after reference to a Welfare and Institutions Code¹ section 366.26 hearing. William E. Lehnhardt, Judge. (Retired Judge of the Imperial Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) One petition is denied; second petition is dismissed.

¹ All statutory references are to the Welfare and Institutions Code.

The juvenile court declared four-month-old J. W., the son of N. W. and Michael W., a dependent after a medical examination disclosed the infant had multiple bone fractures, including a rib fracture, fractures of the wrists and various leg fractures. (§ 300, subds. (a) & (e).)

The court ordered no reunification services on the basis of section 361.5, subdivision (b)(5), after the parents, the child's sole caretakers, denied causing the injuries and denied knowing who did. Relying on the results of a polygraph test in which her denials were deemed truthful, N. W. successfully challenged the court's order denying reunification services and setting a section 366.26 hearing. (*N. W. v. Superior Court* (Aug. 13, 2002, D040102) [nonpub. opn.].) Upon remand, the juvenile court ordered services for N. W., but not for Michael. In granting N. W.'s petition, we noted the weight of the evidence suggested that Michael was the perpetrator. (*Ibid.*)

At the six-month review hearing, the court terminated services for N. W. and set a section 366.26 hearing.

N. W. and Michael petition for writ relief of the order referring the matter to a section 366.26 hearing (§ 366.26, subd. (I); Cal. Rules of Court,² rule 39.1B.) N. W. contends there was no substantial evidence to support the court's findings that she was provided with reasonable reunification services and that she failed to make substantive progress. Michael's petition joins N. W.'s arguments. We issued an order to show cause, the San Diego County Health and Human Services Agency (HHSA) responded and the

² All rule references are to the California Rules of Court.

parties waived argument. We review N. W.'s petition on the merits and deny it. We dismiss Michael's petition for lack of standing.

FACTS

On March 6, 2002, N. W. noticed purplish spots on the inner corners of J.W.'s eyelids. N. W. pointed out the spots to a physician during a previously scheduled well-baby exam the following morning. N. W. also reported that she had noticed J. W. was not fully extending his left leg. The bruising raised suspicions, and later X-rays and a bone scan revealed the multiple fractures. A hospital doctor who was an expert on child abuse said the fractures were in various stages of healing, indicating they were sustained on at least two occasions. The doctor diagnosed J. W. as suffering from "Battered Child Syndrome."

N. W. and Michael denied injuring J. W. or knowing how the injuries occurred — a posture they maintained throughout the proceedings. HHSA took J. W. into protective custody. Michael and N. W. were married the following day.

HHSA filed a petition under section 300, subdivision (a) alleging J. W. had suffered serious physical harm inflicted non-accidentally by his parents. Subsequently, the petition was amended to add a section 300, subdivision (e) allegation that J. W. was a child under five years of age who had suffered severe physical abuse by a parent or by a person known to the parent and the parent knew or reasonably should have known of the abuse.

On May 7 the court found the allegations in the petition to be true, declared J. W. a dependent of the court, and removed him from his parents' custody. The court denied

reunification services (§ 361.5, subd. (b)(5)), and set the matter for a section 366.26 hearing.

After this court granted N. W.'s writ petition, the court on September 4 ordered reunification services for N. W. The objectives of N. W.'s case plan were: to interact with J. W. without physical abuse or harm; to remove identified dangers to J. W.'s physical health; to disallow any contact between the abuser and J. W.; to accept responsibility for her actions; to express anger appropriately and refrain from acting negatively on her impulses; and to develop positive support systems with friends and family. To this end, N. W.'s case plan called for individual counseling aimed toward "working through her denial" regarding J. W.'s injuries, group therapy for women who are in denial regarding abuse that occurred in their homes, a 52-week parenting education program, and a psychological evaluation before the six-month review, examining what, if any, progress N. W. has made and her current perceptions about J. W.'s injuries.

Although no services were offered to Michael, HHSA encouraged him to enroll in services on his own. Michael voluntarily engaged in parenting education, individual therapy and domestic violence treatment. In December, Michael filed a section 388 petition requesting reunification services. On February 21, 2003, the court denied the section 388 petition.³

³ Michael appealed the court's order denying his section 388 petition. On August 8, 2003, this court affirmed the order. (*In re J. W.* (Aug. 8, 2003, D041806) [nonpub. opn.])

In March HHSA recommended a permanent plan be set for J. W. The social worker reported there was not a substantial probability of return by the 12-month hearing date because "the parents have not provided a reason for this child's injuries." After five months of treatment, both parents denied injuring J. W. and failed to provide HHSA with any explanation of how the injuries were incurred. Although the parents had maintained regular visitation, they missed visits in March and April without explanation. HHSA suspected the parents left town to enable N. W., who was pregnant, to deliver a baby out-of-state. A baby girl was born March 29 in Dallas, Texas, and was being cared for by the paternal grandmother. HHSA did not learn this information until April 8 when the court ordered N. W. to disclose it.

Both parents received their treatment at the Institute for Counseling. Michele Koonin, director of the institute, complained in writing to HHSA's social worker that she did not return telephone calls and did not supply requested court reports.

At the contested hearing, Jean Barrs, the social worker, testified she supplied Koonin with a copy of N. W.'s psychological evaluation when it was requested. Barrs denied not returning Koonin's calls and said she never received a request for court reports.

Barrs opined N. W. had not made substantive progress with her case plan because N. W. did not acknowledge J. W.'s physical abuse and articulate an understanding of the cause of his injuries, remained hostile to HHSA and the caregivers, and refused to supply information on her new child until the court ordered her to do so. Barrs did not believe N. W. could protect J. W. from Michael as she continued to live with him and never

acknowledged the possibility that Michael caused the injuries. For Barrs to find N. W. made substantive progress, N. W. had to acknowledge J. W.'s injuries were caused by child abuse.

Koonin testified N. W. made progress in her treatment and was capable of protecting her child. N. W. felt anguish about J. W.'s injuries, and acknowledged that they could have been inflicted non-accidentally, but did not believe Michael injured him. Koonin testified N. W. developed an understanding of the need to protect her child, was able to communicate how she would protect the child from any potential danger and was able to identify potentially dangerous situations. Although she did not believe she must protect J. W. from Michael, N. W. could identify "signs of potential anger or harm" from Michael and would protect J. W. from him, according to Koonin.

Koonin, who operated the only certified child abusers' program in San Diego County, testified her treatment of both parents was hampered by communication and cooperation problems with the social worker. Koonin was never informed the court made a true finding that J. W. would not have suffered the injuries but for the unreasonable acts of his parents and that the Court of Appeal had indicated that the weight of the evidence suggested Michael was the perpetrator. However, Koonin also testified she was aware J. W.'s injuries were non-accidental and the parents were his only caretakers. Koonin also testified she started to work with N. W. on the cause of J. W.'s injuries after Barrs told her that the court had found one of the parents had abused J. W.

On June 23 the court found HHSA provided N. W. with reasonable services and she failed to make substantive progress with her case plan. The court further found there

was no substantial probability J. W. would be returned to N. W. by the 18-month date. The court terminated N. W.'s reunification services and set the section 366.26 hearing.

DISCUSSION

I. N. W.'s Petition

N. W. contends the court's findings that she was provided with reasonable services and that she failed to make substantive progress with her case plan were not supported by substantial evidence. The contention is without merit.

Reunification services are reasonable if HHSA makes a good faith effort to assess and address the parent's problems that resulted in the dependency. (See *In re John B.* (1984) 159 Cal.App.4th 268, 275.) We recognize that in most cases more services might have been provided, and the services that are provided are often imperfect. (*Elijah R. v. Superior Court* (1998) 66 Cal.App.4th 965, 969.) We view the record in the light most favorable to the court's findings and decide if the evidence supporting them is reasonable, credible and of solid value. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53.)

Our review of the evidence shows it supports the conclusion that the services were reasonable and tailored to address the problems that led to the dependency. J. W. was removed from his parents after it was discovered that he had been physically abused, and his parents — the sole caretakers — denied inflicting the injuries or knowing who did. The principal goal of N. W.'s case plan was to ensure J. W. was not physically abused again if he were returned to her. N. W.'s case plan called for individual counseling aimed toward "working through her denial" regarding J. W.'s injuries, group therapy for women denying abuse occurred in their homes, a 52-week parenting education program, and a

psychological evaluation examining what, if any, progress N. W. made during services and her current perceptions about J. W.'s injuries. These services adequately addressed the problems that resulted in J. W.'s dependency — suspected child abuse by Michael and a failure by N. W. to recognize the likelihood Michael injured their son. Substantial evidence supports the court's findings that services to N. W. were reasonable.

N. W. contends the services were not reasonable because HHSA failed to communicate and provide necessary records and information to her therapist, most significantly that the court had made a true finding that J. W. was injured by one of his parents. N. W. argues this lack of information adversely affected Koonin's ability to address the denial issues that were determinative for HHSA. However, the social worker disputed the claim that HHSA had not returned telephone calls to Koonin or not supplied the necessary information. It was the province of the juvenile court to weigh this conflicting evidence, consider the credibility of witnesses and "resolve conflicts in, or make inferences or deductions from the evidence." (*In re Shelia B.* (1993) 19 Cal.App.4th 187, 199.) We cannot reweigh the evidence or second-guess the juvenile court's credibility calls.

Substantial evidence also supported the court's finding that N. W. did not make substantive progress in her case plan. Despite parenting classes, individual counseling, and group therapy geared toward denial issues, N. W. persisted in rejecting the notion that Michael likely injured J. W. Fifteen months after J. W.'s injuries, N. W. had shown little if any progress on this one critical issue, which directly affected her son's protection against future physical abuse. N. W. chose to remain with Michael rather than be

reunited with J. W., and she never indicated she had any intention to limit her son's contact with his father. By failing to acknowledge the likely cause of J. W.'s injuries, N. W. demonstrated a lack of substantive progress. (See *In re Jessica B.* (1989) 207 Cal.App.3d 504, 516-517.)

The court heard contrasting expert testimony from Koonin and Barrs on whether N. W. had shown progress. The court, as trier of fact, was entitled to find Barrs more credible, and give her opinion more weight. (*In re Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53.)

II. Michael's Petition

Michael lacks standing to raise issues regarding N. W. because he was not aggrieved by the juvenile court's findings that reasonable services were offered to her and she did not make substantive progress on her case plan. Nor was Michael aggrieved by the court order terminating services to N. W. Michael cannot join in her arguments. (*In re Frank L.* (2000) 81 Cal.App.4th 700, 703; *In re Caitlin B.* (2000) 78 Cal.App.4th 1190, 1193-1194.)

Michael's reliance on *In re DeJohn B.* (2000) 84 Cal.App.4th 100 is misplaced. That case, which involved an appeal of the termination of parental rights, applied the rule that parental rights cannot be terminated as to only one parent. (*Id.* at pp. 110-111; rule 1463(g).) However, the *DeJohn B.* court added: "We emphasize this does not affect the order terminating father's reunification services." (*In re DeJohn B.*, *supra*, 84 Cal.App.4th at p. 110.)

DISPOSITION

N. W.'s petition is denied. Michael's petition is dismissed.

HUFFMAN, J.

WE CONCUR:

BENKE, Acting P. J.

HALLER, J.